

PRACTICES AND PROCEDURES OF JUDGE SEAN J. McLAUGHLIN

I. GENERAL MATTERS

A. Communications with the Court

Judge McLaughlin prefers that motions be submitted; letters may be permitted in unusual circumstances.

B. Communications with Law Clerks

As a general rule, Judge McLaughlin discourages contact with law clerks relative to case administration or the status of pending motions.

C. Telephone Conferences

Judge McLaughlin will permit attorneys or parties to participate in conferences by phone, depending on the geographic location of the individuals and the nature of the conflict. He prefers that Pittsburgh counsel appear in person. Trial counsel are required to attend pretrial conferences regardless of geographic location.

D. Pro Hac Vice Admissions

Judge McLaughlin requests that a motion for pro hac vice admission be filed, which routinely will be granted.

E. Comment to the Media

Judge McLaughlin adheres to the standards set forth in the Local Rules of Court and has no additional policy.

II. MOTIONS PRACTICE

A. Oral Argument

Except in the most unusual of cases (1 or 2%), Judge McLaughlin will dispose of civil motions on briefs without oral argument. In criminal cases, motions may be argued in connection with an evidentiary hearing. Judge McLaughlin does not set aside any specific day or time for oral argument.

B. Briefs

Judge McLaughlin requires briefs to be filed except for extensions of time, routine motions to amend and non-complex discovery motions. Reply briefs are permitted; surreply briefs are strongly discouraged. The page restriction is twenty-five (25) pages.

C. Chambers Copies of Motion Papers

Judge McLaughlin prefers NOT to receive a courtesy copy of motions papers.

D. Scheduling

Generally, a party will have twenty (20) days to file a response to a motion.

Judge McLaughlin prefers that briefs be filed at the time the motion is filed. If a brief is not filed, the judge will issue an order requiring the other side to respond within twenty (20) days and scheduling a reply brief, if any, within twenty (20) days thereafter.

E. Magistrate Judge's Report and Recommendation

Judge McLaughlin reviews the briefs, the objections to the Report and Recommendation, and gives the case de novo review. Generally, he does not request further briefs and he does not hear argument.

F. Evidentiary Hearings

On criminal case matters, Judge McLaughlin will hold the evidentiary hearing in advance of trial. On civil case matters, he will conduct the hearing near the date set for trial.

G. In Limine Motions

Judge McLaughlin prefers the presentation of such motions at least seven (7) days in advance of trial. He will rule in advance of trial, if possible. Pursuant to his Trial Instructions (Exh. III.D.), on the first day of trial, counsel will appear in chambers at 9:00 a.m. for review of any pending motions.

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

Judge McLaughlin issues a standard Case Management Order (Exh. III.A.1.), which follows Local Rule 16.1.

2. Pretrial Conferences

For cases designated as Track I, Judge McLaughlin generally does not conduct additional case management conferences. For Track II cases, additional conferences are set at six-month intervals.

3. Settlement

The judge has no requirements regarding settlement other than those contained in Local Rule 16.1.

Generally, in a non-jury case Judge McLaughlin will refer the parties to another judge or magistrate judge, unless the parties agree to have Judge McLaughlin pursue settlement.

The potential for ADR has arisen infrequently in Judge McLaughlin's cases;

thus, he has no particular recommendation.

4. **Extensions and Continuances**

Judge McLaughlin will generally grant one extension of the time for discovery. All other motions for extensions and continuances are considered on their merits.

B. **Discovery Matters**

1. **Length of Discovery Period and Extensions**

Judge McLaughlin generally permits 120 days for discovery. He will allow one extension as a matter of course; other extensions will be considered on the merits/circumstances of the case.

2. **Expert Witnesses**

Judge McLaughlin does not have a general policy with respect to discovery depositions of expert witnesses.

3. **Deposition Disputes**

Judge McLaughlin will entertain telephone calls from attorneys at a deposition to resolve discovery disputes.

4. **Stay of Discovery**

Except in the unusual case, Judge McLaughlin will not stay discovery during the pendency of a motion to dismiss or other dispositive motion.

5. **Limitations on Discovery**

Judge McLaughlin does not impose any restriction on the number of interrogatories or depositions or on the use of other discovery procedures.

6. **Rule 11 Motions - Rule 37 Sanctions**

Judge McLaughlin has no specific practice with regard to Rule 11 Motions and Rule 37 Motions for Sanctions. If the motions pertain to a discrete part of the case or thing done, the judge will rule immediately.

C. **Injunctions and TROs**

Judge McLaughlin has no standard practice or procedure with respect to injunctions or TROs and the use of expedited discovery.

D. **Trial Procedures**

1. **Scheduling of Cases**

Judge McLaughlin's cases are called on a rotating basis.

Judge McLaughlin indicated that he “remembers what it was like to be a trial attorney.” Thus, he will accommodate counsel, the parties and the witnesses to the best of his ability, provided he receives sufficient notice of conflicts or other obligations. He will allow the presentation of testimony/witnesses out of turn, within reason.

2. **Trial Hours/Days**

Jury trials are tried between the hours of 9:30 a.m. and 4:30 p.m. Non-jury trials are tried between 9:30 a.m. and 4:30 p.m. Judge McLaughlin has no set time for evidentiary hearings.

3. **Trial Briefs**

Judge McLaughlin does not require but permits trial briefs. The page limitation is twenty-five (25) pages.

4. **Voir Dire**

In civil cases, the Deputy Clerk conducts the voir dire. Counsel is generally not permitted to conduct voir dire of the panel; counsel may ask questions on individual voir dire. Counsel is permitted to supplement the court’s standard voir dire; see Judge McLaughlin’s Trial Instructions (Exh. III.D.). Any questions for voir dire must be received in the judge’s chambers no later than the business day before the commencement of trial. Judge McLaughlin will hold a voir dire conference the morning of trial.

5. **Notetaking by Jurors**

Judge McLaughlin discourages the practice of juror notetaking.

6. **Side Bars**

Judge McLaughlin permits side bar conferences. He has no special rules regarding them.

7. **Examination of Witnesses Out of Sequence**

Judge McLaughlin will permit, within reason, examination of witnesses out of sequence.

8. **Opening Statements and Summations**

Judge McLaughlin generally does not limit the amount of time for opening statements and summations. He leaves that “to the good sense of the attorneys.”

9. **Examination of Witnesses or Argument by More Than One Attorney**

Judge McLaughlin generally limits examination to one attorney per witness. He

has allowed multiple attorneys to conduct the examination of separate witnesses in cases where varying expertise is involved.

10. **Examination of Witnesses Beyond Direct and Cross**

Judge McLaughlin permits redirect, recross, and examination beyond redirect and recross.

11. **Videotaped Testimony**

Judge McLaughlin has no special procedures or requirements with respect to the use/admission of videotaped testimony other than the videotapes be marked as an exhibit. He will generally inquire on this matter at the pretrial conference.

12. **Reading of Material into the Record**

Judge McLaughlin has no particular practice on the reading of material into the record.

13. **Exhibits**

Judge McLaughlin has specific rules. See Trial Instructions, Exh. III.D. Plaintiff uses yellow stickers with the notation “plaintiff”; defendant uses blue with the notation “defendant.” Each sticker is to be marked with the case number at the bottom of the sticker. Exhibits are to be numbered consecutively, preferably in the order to be used at trial.

Additionally, the parties must indicate in their pretrial statements any agreement or disagreement as to the authenticity and admissibility of each exhibit. See Case Management Order, Exh. III.A.1.

Judge McLaughlin will permit the use of visual aids during trial, including opening statement, unless they are deceptive.

Judge McLaughlin does not require that exhibits be offered into evidence before testimony is given about the exhibit, but the exhibit must first be identified for the record.

14. **Directed Verdict Motions**

Judge McLaughlin has no standard requirements as to directed verdict motions or motions to dismiss in non-jury trials.

15. **Jury Instructions and Verdict Forms**

Judge McLaughlin utilizes Devitt and Blackmar as well as Pennsylvania Suggested Standard Civil Jury Instructions.

Judge McLaughlin requires the submission of proposed jury instructions and permits the submission of verdict forms. These are to be received in chambers no later than the business day before the commencement of trial. See Trial Instructions, Exh. III.D. The judge's practice is to hold a charging conference the day before the charge is to be given.

16. **Proposed Findings of Fact and Conclusions of Law**

Judge McLaughlin permits the submission of proposed findings of fact and conclusions of law. He prefers to receive them prior to the commencement of the trial. He considers them to be the equivalent of a trial brief or memorandum. He will permit supplemental submissions at the conclusion of the trial.

17. **Offers of Proof**

Judge McLaughlin does not impose any restrictions upon requests for offers of proof during trial.

18. **General Courtroom Rules**

Judge McLaughlin does not have any special rules of courtroom conduct for attorneys during trial.

E. **Jury Deliberations**

1. **Written Jury Instructions**

Judge McLaughlin generally does not give the jury a copy of the instructions, but will do so upon request of the parties.

2. **Exhibits in the Jury Room**

Judge McLaughlin permits the jury to have exhibits during deliberations, unless common sense dictates otherwise, such as where contraband, dangerous materials, etc., are involved.

3. **Jury Requests to Read Back Testimony or Replay Tapes During Deliberations**

Judge McLaughlin does not normally permit the reading of trial testimony or the replaying of videotaped depositions.

4. **Jury Questions**

Judge McLaughlin contacts the attorneys and assembles with them and the jury in the courtroom to discuss jury questions or requests. Discussion with counsel may occur at side bar.

5. **Availability of Counsel During Jury Deliberations**

Judge McLaughlin prefers that trial counsel remain in the Courthouse during jury deliberations.

6. **Interviewing the Jury**

Judge McLaughlin instructs the jurors that they are under no obligation to speak with the attorneys and he discourages such interviews.

F. **General**

1. **Special Types of Cases**

Judge McLaughlin has no special procedures or practices for particular types of cases, such as Social Security, RICO, class actions.

2. **Other Individual Practices/Procedures**

Judge McLaughlin does not have any other individual practices or procedures.

IV. **CRIMINAL CASES**

A. **Motions**

Judge McLaughlin generally grants motions for extension of time to file pretrial motions where there is significant discovery material to be reviewed.

Judge McLaughlin requires that the proposed order track the language of the Speedy Trial Act.

B. **Pretrial Conferences**

A pretrial conference is scheduled after all motions have been filed and typically within two weeks of the trial.

C. **Guilty Pleas**

Judge McLaughlin has no special rules regarding guilty pleas.

Judge McLaughlin does not have a deadline for accepting/rejecting plea bargains.

Judge McLaughlin follows a written format for guilty pleas, which is available for counsel's review.

D. **Voir Dire**

See Answer to III.D.4., supra.

E. **Trial**

Judge McLaughlin permits rather wide latitude with regard to the examination of a witness/areas by more than one defense attorney in multi-defendant cases. He has no specific rules here.

Upon request, Judge McLaughlin will grant a motion for the sequestration of witnesses.

Judge McLaughlin permits the use of transcripts of tape-recorded conversations but issues a cautionary instruction that the real evidence is what the jurors hear, not what they read.

Judge McLaughlin permits the defense attorney to determine when to present the opening statement.

Judge McLaughlin has no specific policy concerning the submission of special interrogatories to a jury in a criminal case.

Judge McLaughlin prefers that waivers of a defendant's rights be placed on the record at a recess.

F. Sentencing Memoranda

Judge McLaughlin requires the submission of a sentencing memorandum subsequent to the plea or verdict and before sentencing.

G. Sentencing Conference

Judge McLaughlin has, on occasion, held a conference for cases under the Sentencing Guidelines prior to the actual imposition of sentence.

Judge McLaughlin does not normally issue tentative findings and rulings on Sentencing Guidelines issues.

H. Other General Practices and Procedures

If requested by defense counsel, Judge McLaughlin will make recommendations to the Bureau of Prisons regarding the federal institution where a defendant should be confined.

Judge McLaughlin prefers that Jencks material be provided at least forty-eight (48) hours prior to the commencement of trial.

Judge McLaughlin requires the filing of a formal motion for leave to permit the defendant to travel outside the district.

Judge McLaughlin's policy on handling conflicts between defense counsel and the defendant is to hold a hearing on the record.

V. BANKRUPTCY CASES

N/A.

VI. BANKRUPTCY APPEALS (TO THE DISTRICT COURT)

A. Filing/Scheduling

Judge McLaughlin does not have any particular requirements regarding the filing or scheduling of bankruptcy appeals.

B. Oral Argument

Judge McLaughlin does not require oral argument and will generally NOT permit it.

C. Other General Practices/Procedures

Judge McLaughlin has no general policy or practice regarding requests to modify the briefing schedule or other requirements set forth in the Federal Rules of Bankruptcy Procedure.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT ORDER

AND NOW, this _____ day of _____, 199____, it is hereby ORDERED as follows:

1. **Local Rule LR 16.1.** The above-captioned civil action is hereby placed under Local Rule LR 16.1 of this court. All provisions of the Rule will be strictly enforced.

2. **Settlement Negotiations.** Counsel for the parties shall confer with their clients before all case management, status or pretrial conferences to obtain authority to participate in settlement negotiations conducted by the court. Counsel are encourage to appear with their individual clients or with principals of corporate or other clients at all such conferences or to instruct such clients or principals to be available by telephone at the time of such conferences to facilitate settlement negotiations.

3. **Pretrial Procedures.** Compliance with the provisions of Local Rule LR 16.1 shall be completed as follows:

(a) The parties shall complete discovery on or before _____. For purposes of this paragraph 3(a), the term "discovery" shall include all methods of discovery referred to in Fed.R.Civ.P. 26(a). Motions for extension of discovery shall not be considered unless filed prior to the scheduled close of discovery.

(b) Plaintiff _____ pretrial narrative statement shall be filed on or before _____. Defendant _____ pretrial narrative statement _____ shall be filed on or before _____. Plaintiff _____

pretrial narrative statement shall comply with Local Rule LR 16.1.4.A.1-6. Defendant _____ pretrial narrative statement _____ shall comply with Local Rule LR 16.1.4.B.1-6. [Third-party defendant _____ pretrial narrative statement shall comply with Local Rule LR 16.1.4.C.]

(c) On or before _____, any party may file a dispositive motion which shall be accompanied by a supporting brief, and such affidavits and other supporting documentation as may be appropriate. Any responding party may file an opposing brief, together with such affidavits and opposing documents as may be appropriate on or before _____. Any party failing to respond to a motion shall be deemed not to oppose the motion.

4. **Pretrial Stipulation.** After the pretrial conference, counsel for the parties may be ordered by the court to meet at a mutually convenient place to complete a pretrial stipulation to further delineate the legal and factual issues involved in the action.

5. **Track I Designation.** The above-captioned action is designated a Track I action pursuant to Local Rule 16.1.2.C.

6. **Arbitration.** The parties are advised of the availability of arbitration in certain cases pursuant to this court's Local Rule LR 16.2.

7. **Contents of Pretrial Statements.** As provided in Local Rule LR 16.1.4 of this court, the parties' pretrial statements shall set forth the information hereinafter described:

(a) **Factual and Legal Contentions.** A brief but full exposition shall be made of the legal theories that will be pursued at trial and a statement shall be made, in narrative form, of the material facts that will be offered at trial.

(b) **Damages.** An itemized list shall be set forth of all damages claimed, including the method of calculation and how damages will be proved.

(c) **Witnesses.** Each party shall list those witnesses to be called at trial other than those contemplated to be used for impeachment or rebuttal purposes.

(1) Witnesses shall be identified by their full names and addresses.

(2) Witnesses shall be separately listed and designated as to liability and damages.

(3) All witnesses who will testify as experts shall be designated as such. The report of each witness designated as an expert shall be attached to the pretrial statement. The testimony of an expert witness will be confined to those matters set forth in his or her report.

(4) A copy of each report containing the findings and conclusions of any physician who has treated or examined or who has been consulted in connection with any injury complained of and whom a party expects to call as a witness at trial must be attached to the party's pretrial statement. The testimony of each such witness will be confined to the scope of his or her report.

(d) **Exhibits.** Each party shall specifically identify and list each exhibit that will be offered at trial.

(1) Each exhibit must be identified by number or letter on the party's pretrial statement. Plaintiffs shall use numbers, and defendants shall use letters.

(2) The pretrial statement shall indicate the parties' agreement or disagreement as to the authenticity and admissibility of each exhibit.

(3) Each party shall designate every issue that he or she considers unusual in the case.

(e) **Amendment of Pretrial Statements.** The parties shall not amend or supplement their pretrial statements without leave of court.

(f) **Sanctions.** At trial, each party shall be limited to those factual and legal issues contained in his or her pretrial statement. All evidence, except evidence offered for impeachment, that does not relate to a factual or legal issue set forth in the pretrial statement or disclosed at the pretrial conference shall be excluded unless the parties otherwise agree or the court orders otherwise.

8 Pre-Trial Conference. A Pre-Trial Conference shall be scheduled by the Court upon receipt of all Pre-Trial Statements. COUNSEL TRYING THE CASE SHALL BE PRESENT AT THE PRETRIAL CONFERENCE.

9. Additional Pretrial Requirements. In addition to the foregoing requirements relating to pretrial statements, the parties shall also comply with the following pretrial requirements.

(a) **Discovery Depositions.** A party intending to use a discovery deposition in its case-in-chief shall:

(1) Identify the deposition by the name of the deponent and date of his or her deposition;

(2) Designate to the court and to the opposing party the pages and lines that will be offered at trial; and

(3) Opposing counsel shall counter-designate those lines and pages of the same deposition that will be offered at trial.

(b) **Settlement Negotiations.** The parties shall extensively pursue settlement negotiations and advise the court of their status. At the Pre-Trial Conference, the parties shall be prepared to discuss settlement and have the appropriate authority to settle the case.

(c) **Trial Time.** The parties shall be prepared to state at the Pre-Trial Conference an estimate of the number of days required for trial. Counsel will be advised at that time of their position on the Trial List and tentative trial date.

Sean J. McLaughlin
United States District Judge

cc: All parties of record. MK

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

**HONORABLE SEAN J. McLAUGHLIN
TRIAL INSTRUCTIONS**

1. **JURY TRIALS**—The Court will operate a continuous trial list. The trial term shall run Monday through Friday from 9:30 a.m. to 4:30 p.m. with the exception of the first day of trial. On the first day of trial, counsel should be present in Chambers at 9:00 a.m. for the purpose of reviewing proposed voir dire, and pending motions or any other matter that may be appropriate. If, at the conclusion of a trial day, counsel is aware of a matter which will require a meeting with the Court in chambers, the Court should be advised immediately. The matter will be taken up in chambers either that evening or at 9:00 a.m. the following morning.

2. **VOIR DIRE**—Questions for Voir Dire are to be received IN THE JUDGE'S CHAMBERS no later than the business day before the commencement of trial.

3. **POINTS FOR CHARGE**—Points for Charge are to be received IN THE JUDGE'S CHAMBERS no later than the business day before the commencement of trial.

4. **EXHIBITS**—Exhibits should be pre-marked as follows:

1. Plaintiff shall use yellow stickers; Defendant shall use blue stickers;
2. Each sticker shall indicate at the top whether it is Plaintiff's exhibit or Defendant's exhibit;
3. Each sticker shall indicate the case number at the bottom;
4. Exhibits shall be numbered consecutively (preferably in the order to be used during the trial.)

Prior to using an exhibit during the course of the trial, please present the exhibit to the courtroom deputy for appropriate identification. All exhibits already admitted into evidence are to remain on the table next to the courtroom deputy. Exhibits will be maintained by the Court during the trial. Exhibits too large to be mailed in an 8-1/2" x 11" envelope will be returned to the parties at the end of the trial. All other exhibits will be retained by the Court.

5. **NON-JURY TRIALS**—Non-Jury Trials shall run Monday through Thursday from 9:30 a.m. to 4:30 p.m.